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Chairman, Board of Equalization

# Agriculture Update

## Important amendment to food container law

Do you use containers to ship food products? If so, you'll be happy to know that effective April 1, 2000, the current exemption is expanded to provide an exemption for all containers, returnable or non-returnable, when the containers are used to ship food products. Legislation creating this change, Senate Bill 1210 (Baca), eliminates the distinction between a returnable and non-returnable container when the container is used to ship food products for human consumption.

The bill also eliminates the need for the container to be sold with the food products, thus allowing the exemption for container leasing. Containers used solely for storage and not for shipment of food for human consumption, how-

ever, do not qualify for the exemption. SB 1210 was sponsored by CHEP, a company that manufactures and distributes pallets.

Prior to April 1, 2000, containers sold without the contents to persons who place food products in the container would qualify for an exemption only if the containers were: (1) a non-returnable container sold without the contents to a person who places the contents in the container and sells the contents together with the container; (2) a returnable or non-returnable container when the container is sold with the food products; or (3) a returnable container when sold for refilling.

## Container law reduces solid waste



Jim Vangelos, V. P. of CHEP USA, says "an added benefit of the amended container law is the reduction in solid waste. Each time a reusable container (1 1/2 pounds) or pallet (25 pounds) is used, solid waste is eliminated from the landfill. This will add up to billions of pounds over the years, helping California municipalities comply with AB 939, the reduction of solid waste mandate."

## New property tax rule for propane tanks

Last year, the Board of Equalization (BOE) exercised its rulemaking authority and proposed Property Tax Rule 153, *Liquefied Petroleum Gas Tanks*. This rule was promulgated in response to the Western Propane Gas Association's (WPGA) request for the Board to address a disparity in the treatment of propane tanks throughout California.

The proper valuation of propane tanks depends on the appropriate trade level. If the tank is owned and maintained by the propane tank company, and not leased or rented to the customer, it should be valued at the wholesale level. If it is leased or rented to the consumer of the gas, it should be valued at the retail level. In other words, if the company is determined to be the owner of the tank, then the tank should be assessed at a lower value. Lower value attributed to the property means lower property tax.

As pointed out by WPGA, depending on which county the tanks are located, they are either valued at the retail level or the wholesale level. The 58 county assessors do not assess tanks consistently. Some believe that because the tanks are located on the gas customer's property, the customer is the ultimate consumer of the tank and, therefore, the tank should be val-

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## Application of sales tax to propane used in homes

Under current law, sales tax does not apply to the delivery of gas, electricity and water when delivered to consumers through mains, lines, or pipes for general household use. However, if propane is delivered to a home located in a rural area sales tax may apply. Sound confusing? That's because it is. Like many of the provisions in the Sales and Use Tax Law, the section relating to various forms of energy delivered into a home, is complicated and nonsensical.

In defense of Board of Equalization staff, they have been liberal in their interpretation of the law, considering how ambiguous the statute is written. However, this doesn't really help those who are stuck paying the tax or those who must jump through hoops to qualify for the exemption. The following informa-

tion is being provided in hopes that, if you are paying sales tax on the purchase of propane used in your home, you will be able to adjust your transactions to meet the requirements of the exemption.

The sale of propane will qualify for the exemption provided for in Section 6353 if the seller retains title to and possession of the propane until the seller delivers the propane in vapor form to the customer through the customer's mains, lines, or pipes. If the propane is initially delivered in liquid form to a tank on the purchaser's premises, the buyer and seller must enter into a written agreement, signed by both parties, specifying that title to the propane will pass at the time the propane enters into the custom-

er's mains, lines or pipes in vapor form. This is necessary in order for the seller to effectively retain possession of the liquid propane on the customer's premises, prior to the sale. Additionally, in order to qualify for the exemption under Section 6353, the seller must either place its own tank on the customer's premises without leasing the tank to its customer, or the seller must lease a tank from the customer or from some other person. Lastly, if a lease of a customer's tank is involved, it must be a bona fide lease. A charge cannot be made to the customer who leases the tank to the seller that is not made to customers who do not lease the tanks. Considering all that has to be accomplished in order to qualify, sounds like it's time to take another crack at amending the law!

### TAX

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ued at the retail level. In reaching that conclusion, these assessors fail to recognize the fact that the propane distributor is required by law (and contract) to maintain the tank and the lessee of the tank cannot touch or handle it in any way. Therefore, while the tanks may be located on a gas consumer's property, it cannot be "used" or "consumed" by the gas consumer.

It was due to the discrepancy from county to county that a rule providing guidance on valuation of propane tanks was desperately needed. Despite opposition from the County Assessors

Association, the BOE and WPGA, came to an agreement on language that would promote assessment uniformity.

The proposed rule provides criteria for determining the identity of the consumer of the tank. The rule focuses on rental or lease as the key determinative for the trade level at which the tanks should be valued. Whether the tank is leased or rented is determined by looking at who pays the sales tax, installation and maintenance, and whether rent or any other separately stated charge is made on the tank.

The proposed rule also defines the term "LPG tank." This will ensure that necessary ancillary equipment is assessed at the same trade level as the

tank itself and will avoid the possibility of gauges being valued at a higher retail level while tanks are valued at the lower wholesale level. With this definition, there should be no dispute over this issue in the future.

The proposed regulation has been sent to the Office of Administrative Law and is awaiting approval. If approved, all county assessors must follow Property Tax Rule 153 to assess propane tanks consistently.

Once again, special thanks goes out to Mary Reynolds and the WPGA for bringing this important issue to the Board. Assessment uniformity is of vital importance to every property taxpayer in this state.

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